IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 06.11.2017

ORDER PRONOUNCED ON: 10.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Insolvency Petition No.68 of 1999

India Cements Capital & Finance Ltd.,
(Formerly Aruna Sugars Finance Ltd.)
... Petitioning Creditor

Vs.

R.Subramanian ... Debtor

Prayer: Petition filed under Sections 9 (d) (ii) (iii), 10 & 11 of the Presidency Town Insolvency Act, 1909 read with Order III Rule 8 of the Insolvency Rules, praying (i) directing that the respondent be adjudicated as as insolvent; (ii) directing that the estate of the Respondent Debtor on such adjudication vest with the Official Assignee to be administrated for the benefit of the general body of creditors; (iii) directing that the cost of this petition to come out of the estate of the insolvent.

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For Petitioning Creditor : Mr.K.Rajasekaran
For Debtors : No apearance

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O R D E R

This Insolvency Petition has been filed by the Creditor under Sections 9 to 11 of the Presidency Town Insolvency Act, seeking to adjudicate the respondent debtor as an insolvent for inability to pay the debts.

2. According to the petitioning creditor, it entered into various Hire Purchase Agreements during the year 1995 with M/s.Maxworth Orchards (India) Ltd., and advanced various amounts to them. The respondent debtor had executed a deed of guarantee on 20.01.1995, guarantying the payment of the amounts due under the Hire Purchase Agreements. It is the case of the petitioning creditor that despite several demands neither the principal borrower, viz. M/s.Maxworth Orchards (India) Ltd., or the guarantor, viz. Respondent debtor have not come forward to pay the debts due under the Hire Purchase Agreement. Citing the failure to pay the debts as an inability to pay the debts the petitioning creditor moved this petition seeking to adjudicate the respondent debtor (the guarantor) as an insolvent.

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3. Notice was issued to the respondent debtor but he has not appeared through counsel. In the counter filed by the respondent he would not deny the guarantee. It is contended that the insolvency petition has been filed only to pressurize the respondent to pay the dues of

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M/s.Maxworth Orchards (India) Ltd. The claims of the petitioning creditor that the respondent debtor was avoiding payment and that he is unable to discharge the debts have also been denied.

4. On the side of the petitioning creditor P.W.1 and P.W.2 were examined and P.W.1, who was the Deputy General Manager of the petitioning creditor and he has produced Exhibits P1 to P27. During the course of his deposition, he has stated that according to the Statement of Accounts marked as Ex.P27, there was a sum of Rs.13,38,346/- due and payable to the petitioning creditor as on 31.01.1999. It is also seen from Ex.P21 to P26 that the notices addressed to the company, viz. M/s.Maxworth Orchards (India) Ltd., as well as the debtor were returned with endorsement "refused". P.W.1 has also deposed to the effect that the debtor has made himself scarce and he avoided the meeting of the officials of the petitioning creditor, when they visited his residence as well as his office premises seeking repayment. Though he has been cross examined by the learned counsel for the debtor a reading of the cross examination shows that nothing has been elicited to discredit his evidence in chief examination. P.W.2, who is the officer in-charge of the accounts department of the petitioning creditor has been examined and he has filed Ex.P27, the Statement of Accounts. He has also deposed that the respondent debtor

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has guaranteed the repayment of the money. He had also been cross examined by the learned counsel for the respondent debtor. He would admit that some of the machineries which are the subject matter of hire purchase agreements were repossessed by the petitioning creditor and he would also depose that the amounts that were recovered in the process were credited to the account of the borrower only after adjusting the amounts realised by way of the sales the amount due as on 31.01.1999 was arrived at Rs.13.38,346/- as per the statement of accounts.

5. The execution of hire purchase agreement and the borrowing is not in dispute. The fact that the borrower has not repaid the money due under the hire purchase agreements marked as Exs. P2 to P10, is also not disputed. As per the Statement of accounts Ex.P27, the total amount due by M/s.Maxworth Orchards (India) Ltd., as on 31.01.1999 is shown as Rs.13,42,999/-. To disprove the liability under the hire purchase agreement, the debtor has originally examined one S.Sampath Kumar R.W.1 and thereafter came forward with an application in Application No.14 of 2016 seeking to eschew his evidence and to permit him to produce the new witness. The said application was allowed by this Court on 06.06.2016 and pursuant to the said order one Asokan S/o. S.Muthu Chidambaram, as P.W.2 filed his proof affidavit. He only says that the debtor had attended

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several Board Meeting during the year 1999 and therefore, the claim of the petitioning creditor that the debtor is evading payment and he was not attending office is not correct. In the cross examination, he claims that he was a personal accountant of the debtor and he also claimed that he is an employee of M/s.Sterling Holiday Resorts (India) Ltd., and he was the in-charge of accounts in the said company between 1998 and 2006. Though he claims that he is in possession of documents to prove the same, he has not produced any record to prove his version. He also claimed ignorance as to the purpose for which the petition was filed and the details of the person who had filed the petition.

6. Exs. R1 to R4 were filed by Mr.S.Sampathkumar as P.W.1 which show that the debtor has attended the meetings of M/s.Sterling Holiday Resorts (India) Ltd., during the year 1999. A close reading of the evidence on record would show that the debt has been proved and the inability of the debtor to pay of the debts is also established. Thus, I conclude that the debtor has committed an act of insolvency within the meaning of Section 9 of the Presidency Town Insolvency Act, and he is adjudged as insolvent. Going by the totality of the evidence, I conclude that the creditor has made out the case for obtaining an order of adjudication against the debtor. Hence, the debtor is adjudicated as an insolvent and his assets will vest in

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the Official Assignee for the benefit of the general body of creditors. The costs of this petition shall be paid by the Official Assignee out of the estate of the debtor to the petitioning creditor. The insolvent is granted 18 months time to apply for discharge.

7. It is brought to my notice that the very same debtor has been adjudicated by this Court as an insolvent in another IP No.43 of 2014 dated 10.08.2015. So the Official Assignee shall take note of the claim of the petitioning creditor also while administering the estate of the insolvent in IP No.43 of 2014.

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Index : No
Internet: Yes
Non Speaking order

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List of the Witnesses examined on the side of the Petitioning Creditor:

P.W.1 A.V.Jayashankar

P.W.2 K. Venkatachalam

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List of Exhibits marked on the side of the Petitioning Creditor:

Ex.No.	Date	Details
P1		Incorporation Certificate of the petitioning creditor
P2	07.03.1995	Hire purchase Agreement entered into between the petitioning creditor and M/s.Maxworth Orchards (India) Ltd
P3	27.01.1995	Hire purchase Agreement entered into between the petitioning creditor and M/s.Maxworth Orchards (India) Ltd
P4	07.02.1995	Hire purchase Agreement entered into between the petitioning creditor and M/s.Maxworth Orchards (India) Ltd
P5	22.02.1995	Hire purchase Agreement entered into between the petitioning creditor and M/s.Maxworth Orchards (India) Ltd
P6	22.03.1995	Hire purchase Agreement entered into between the petitioning creditor and M/s.Maxworth Orchards (India) Ltd
P7	20.01.1995	Hire purchase Agreement entered into between the petitioning creditor and M/s.Maxworth Orchards (India) Ltd
P8	06.02.1995	Hire purchase Agreement entered into between the petitioning creditor and M/s.Maxworth Orchards (India) Ltd
P9	10.02.1995	Hire purchase Agreement entered into between the petitioning creditor and M/s.Maxworth Orchards (India) Ltd
P10	06.04.1995	Hire purchase Agreement entered into between the petitioning creditor and M/s.Maxworth Orchards (India) Ltd
P11	20.01.1995	Guarantying executed by the Debtor
P12	14.03.1997	Letter acknowledging the liability issued by the Hirer M/s.Maxworth Orchards (India) Ltd
P13	13.03.1998	Demand Notice issued by the Petitioning Creditor
P14	27.11.1997	Demand Notice issued by the Petitioning Creditor
P15	20.09.1997	Demand Notice issued by the

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		Petitioning Creditor
P16	18.08.1997	Demand Notice issued by the Petitioning Creditor
P17	27.06.1997	Demand Notice issued by the Petitioning Creditor
P18	26.05.1997	Letter acknowledging liability
P19	28.07.1997	Letter acknowledging liability
P20	08.09.1997	Letter acknowledging liability
P21	24.02.1999	Notice with returned cover
P22		Notice with returned cover
P23	22.03.1999	Notice with returned cover
P24		Notice with returned cover
P25		Notice with returned cover
P26		Notice with returned cover
P27		Statement of Account as on 25.03.1999

List of the Witnesses examined on the side of the Debtor:

R.W.1 S. Sampathkumar
R.W.2 Mr.Ashokan

List of Exhibits marked on the side of the Debtor:

Ex.No.	Date	Details
R1	25.02.1999	Certified copy of the Meeting of the Board of Directors
R2	11.03.1999	Certified copy of the Meeting of the Committee of the Directors of Sterling Holiday Resorts (India) Ltd.
R3	29.03.1999	Certified copy of the Meeting of the Committee of the Directors of Sterling Holiday Resorts (India) Ltd.
R4	25.03.1999	Minutes of the Extra-Ordinary General Meeting of Sterling Holiday Resorts (India) Ltd.

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R.SUBRAMANIAN,J.

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